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PAGE 01 STATE 165826

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TO AMEMBASSY BERN

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FOLLOWING REPEAT EC BRUSSELS 5265 SENT SECSTATE INFO BONN
BRUSSELS COPENHAGEN DUBLIN LONDON LUXEMBOURG PARIS ROME
THE HAGUE GENEVA OECD PARIS DATED JUL 16.

QUOTE

LIMITED OFFICIAL USE EC BRUSSELS 5265

E.O. 11652: N/A

TAGS: ETRD, EEC, EIND

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PAGE 02 STATE 165826

SUBJECT: EC HARMONIZATION OF GOVERNMENT PROCUREMENT

REF: A) EC TRANSMITTAL SLIP OF DECEMBER 20, 1973

B) EC A-282, JULY 25, 1973

1. SUMMARY: THE EC COUNCIL ECONOMIC WORKING GROUP IS CONTINUING ITS EFFORTS TO HAMMER OUT AGREEMENT ON A DRAFT DIRECTIVE ON GOVERNMENT PROCUREMENT. ACCORDING TO A CONFIDENTIAL EC COUNCIL NOTE, THE WORKING GROUP HAS SOUGHT GUIDANCE FROM THE PERM REPS ON SEVERAL ISSUES, E.G. HOW CAN THE COUNCIL ADOPT THE DRAFT DIRECTIVE WITHOUT UNDERMINING THE EC BARGAINING POSITION AT THE OECD AND MTN; THE WAY TO HANDLE THE TELECOMMUNICATIONS SECTOR; THE MINIMUM CONTRACT THAT WILL BE SUBJECT TO THE DRAFT DIRECTIVE. THE DRAFT DIRECTIVE WOULD APPLY TO PRODUCTS FROM THIRD COUNTRIES BUT THERE MAY BE DELAYS IN ITS OVERALL APPLICATION AND MODIFICATIONS IF RECIPROCAL ARRANGEMENTS ARE NOT WORKED OUT IN INTERNATIONAL NEGOTIATION. END SUMMARY.

2. THE MISSION HAS OBTAINED ON A CONFIDENTIAL BASIS A NOTE PREPARED BY THE EC COUNCIL SECRETARIAT, DATED JUNE 13, WHICH IS A REQUEST FROM THE COUNCIL ECONOMIC WORKING GROUP ON GOVERNMENT PROCUREMENT TO THE COMMITTEE OF PERMANENT REPRESENTATIVES (COREPER) FOR GUIDANCE ON SEVERAL ISSUES REGARDING WHICH DISCUSSIONS IN THE WORKING GROUP ARE AT AN IMPASSE. THE WORKING GROUP HAS BEEN DISCUSSING A REVISED DRAFT DIRECTIVE COORDINATING PROCEDURES FOR GOVERNMENT PROCUREMENT FOR OVER A YEAR, THE ACTION PROGRAM ON INDUSTRIAL POLICY SETS JANUARY 1, 1975 AS A TARGET DATE FOR COUNCIL APPROVAL OF THE DRAFT DIRECTIVE (SEE REFS A AND B).

3. THE FIRST PROBLEM POSED TO COREPER IS A TACTICAL ONE OF INTEREST TO THE U.S.: HOW CAN THE EC COUNCIL APPROVE A GOVERNMENT PROCUREMENT DIRECTIVE WHICH OPENS UP MEMBER STATE MARKETS TO PRODUCTS FROM THIRD COUNTRIES WITHOUT GIVING AWAY THE EC'S BARGAINING LIMITED OFFICIAL USE

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PAGE 03 STATE 165826

POSITION ON THE GOVERNMENT PROCUREMENT CODE IN THE OECD AND IN THE UPCOMING MULTINATIONAL TRADE NEGOTIATIONS.

4. A FRENCH PROPOSAL WOULD PERMIT PURCHASING AGENCIES TO LIMIT THE APPLICATION OF THE DIRECTIVE TO PRODUCTS OF EC ORIGIN FOR A TRANSITORY PERIOD WHICH WOULD LAST UNTIL A BALANCED SOLUTION IS FOUND WITH THIRD COUNTRIES IN THE CONTEXT OF INTERNATIONAL NEGOTIATIONS.

5. A COMPROMISE SOLUTION DEVELOPED BY THE EC COMMISSION, AND AGREED UPON BY ALL THE MEMBER STATES EXCEPT FRANCE, CALLS FOR A DECLARATION BY THE EC COUNCIL WHICH WOULD STATE A) IN ADOPTING THE DRAFT DIRECTIVE, THE COUNCIL WOULD CREATE A SITUATION WHICH IS VERY FAVORABLE FOR THIRD COUNTRIES,

B) IN THE LIGHT OF THE OECD AND GATT NEGOTIATIONS, THE COUNCIL SEEKS A RECIPROCAL SITUATION WITH THIRD COUNTRIES, C) BECAUSE OF THE INTERNATIONAL NEGOTIATIONS THE COUNCIL COULD DELAY THE APPLICATION OF THE DIRECTIVE AND IF NECESSARY TAKE APPROPRIATE MEASURES OFFERED BY ARTICLE 115 OF THE TREATY (SAFEGUARD MEASURES), AND D) THE COUNCIL COULD MODIFY THE DRAFT DIRECTIVE DEPENDING ON THE OUTCOME OF THE INTERNATIONAL NEGOTIATIONS.

6. A SECOND PROBLEM IS THE APPLICATION OF THE DRAFT DIRECTIVE TO THE TELECOMMUNICATIONS SECTOR. ONE DIFFICULTY IS THAT THE LEGAL STATUS OF THE TELECOMMUNICATIONS SYSTEMS IN THE DIFFERENT COUNTRIES IS NOT THE SAME AND THE COMMISSION HAS AGREED TO PROVIDE A SOLUTION PERMITTING THE APPLICATION OF THE DRAFT DIRECTIVE TO ALL OF THE MEMBER STATES. THE MEMBER STATES ALSO WANT TO KNOW THE TECHNICAL AND ECONOMIC IMPLICATIONS OF APPLYING THE DRAFT DIRECTIVE TO TELECOMMUNICATIONS. THE COMMISSION HAS OFFERED TO PREPARE BY OCTOBER 15 A STUDY (IN COLLABORATION WITH THE MEMBER STATES) WHICH WOULD DESCRIBE: A) ACTUAL POSSIBILITIES FOR COMPETITION IN THE PRINCIPAL CATEGORIES OF TELECOMMUNICATIONS MATERIAL, B) CHANGES NEEDED IN THE DRAFT DIRECTIVE LIMITED OFFICIAL USE

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PAGE 04 STATE 165826

TO MAKE IT MORE EFFECTIVE IN THIS FIELD AND C) HARMONIZATION NEEDED AT A COMMUNITY LEVEL TO PERMIT COMPETITION ON THE NEXT GENERATION OF TELECOMMUNICATIONS EQUIPMENT. (COMMENT: AN EC COMMISSION OFFICIAL HAS TOLD US THAT THE PRESENT EQUIPMENT IN EACH COUNTRY IS SO DIFFERENT AND SO GEARED TO THE TECHNOLOGIES OF NATIONAL FIRMS THAT IN THE SHORT RUN THE EFFECTS OF OPENING THE TELECOMMUNICATIONS MARKET WOULD BE MINOR. NEVERTHELESS WE UNDERSTAND THE INCLUSION OF TELECOMMUNICATIONS IS A MAJOR PROBLEM).

7. THE FRENCH INSIST THAT THE ECONOMIC WORKING GROUP AND NATIONAL EXPERTS UNDERTAKE THIS TELECOMMUNICATIONS STUDY RATHER THAN THE COMMISSION AND

IT IS THIS PROCEDURAL ISSUE THAT THE COREPER IS
BEING ASKED TO DECIDE.

8. A THIRD PROBLEM COREPER MUST DECIDE ON IS THE
NON-APPLICATION OF THE DRAFT DIRECTIVE ON GOVERN-
MENT PROCUREMENT IN CASES OF INTERNATIONAL AGREE-
MENTS WITH THIRD COUNTRIES INCLUDING INTERNATIONAL
AGREEMENTS CONNECTED WITH THE STATIONING OF FOREIGN
TROOPS. THE FRENCH WISH TO MAKE THIS EXCEPTION AS
RESTRICTIVE AS POSSIBLE. MOST OF THE OTHER DELE-
GATIONS BELIEVE THAT SUCH INTERNATIONAL AGREEMENTS
ARE RARE AND THAT A CONSULTATIVE COMMITTEE CAN LOOK
INTO ABUSES.

9. THE MEMBER STATES ALSO DISAGREE ON WHAT SHOULD
BE THE MINIMUM VALUE OF A CONTRACT FALLING UNDER
THE DRAFT DIRECTIVE. THE POSITIONS RANGE FROM
150,000 TO 250,000 UNITS OF ACCOUNT AND COREPER
IS BEING ASKED FOR GUIDANCE.

10. A FINAL ISSUE FOR COREPER IS WHETHER THE DRAFT
DIRECTIVE SHOULD PROVIDE FOR AN EXCEPTION IN CASES
WHERE MEMBER STATES FAVOR CERTAIN ENTERPRISES AS
PART OF A POLICY OF AID, E.&. REGIONAL PREFERENCES
FOR THE MEZZOGORNIO. THE COMMISSION WOULD NOT WANT
TO SEE SUCH EXCEPTIONS WRITTEN INTO THE DIRECTIVE
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PAGE 05 STATE 165826

AND BELIEVES THEY SHOULD BE TRREATED IN THE CONTEXT
OF OTHER POLICIES. GREENWALD UNQUOTE KISSINGER

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